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The Basis for Native Claims in Canada

by Dr. Lloyd Barber

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THE BASIS FOR NATIVE CLAIMS IN CANADA

BY

L. I. Barber,
Indian Claims Commissioner for Canada

Since my appointment as Indian Claims Commissioner, I have had the opportunity to carry out extensive studies and discussions with native people about their claims. I have spent a great deal of time trying to understand the basis for these claims and it has led me to the strong conviction that there has always been a serious fundamental difference between our views on what is right and desirable and the native view on what is right and desirable in the relationship between native people and the larger Canadian society.

Traditionally, our view has always been that native people must play our game, essentially by the same rules, with some help from us but on a gratuitous basis. This point of view is woven throughout the entire history of Indian affairs in Canada, although there have been times when the Government has tended to be less aggressive about integration and felt that the best policy was to separate Indians as far as possible from the mainstream of Canadian society. While the direct integration approach hasn't worked in the past, there is still a very great tendency to see it as the only realistic approach to Indian affairs in Canada. Those who advocate a continuation of this approach hold that the goal of equality for Indian people, with assistance from Government, can be achieved. While they would acknowledge that the game is heavily loaded against native people because of cultural and educational differences and so on, they appear to feel that native people can be given enough special assistance to enable them to compete effectively as ordinary Canadians within the framework of conventional, political and economic activity in Canada.

I think there was a time when I held this view myself. However, since I have become involved in native claims, I have come to see that native people simply do not buy our basic assumptions about what is right and what is workable. As I understand it, they are saying to us, first of all, that because of their original land rights, they have an ownership and right to direct participation in resource development and a high degree of political autonomy within the larger society. This right derives, of course, from their original occupation of Canada before Europeans came. They are saying that they are a distinct and in some ways, separate people who must have a special status within our country. Secondly, I think they are saying that as a practical matter, no matter how hard we try, it is simply not feasible to think that native people can be brought into our game just like us when they start with such basic differences in culture and so heavily disadvantaged from the standpoint of economic and political power.

This basic idea of a right and a need for substantial resources and self determination is not unique to the Northwest Territories. Native people in all parts of the country are working from this same basic position in the wide variety of claims that are being put forward. It is my impression that this has always been very much at the root of the Indian view but until recently, they have not had the political power to put their case forward with full force. We should not, however, think that it is anything new or that it is something created by a new generation of Indian leaders

or that it is something that developed because the Government decided to support the development of native organizations. When you study the history of native affairs in Canada, it becomes quite apparent that this position has been held from the start and has merely been dormant waiting for articulate political leadership. I am quite convinced that native people have always seen the rest of us as intruders in a land which was entirely theirs, and while they have been powerless to do much about it, they nevertheless hold views and feelings which are very similar to the views of previously colonized but now emerging nations in the third world, or to the aspirations of various peoples around the world who feel that their original sovereignty has not been respected.

All the while that native people have been harboring their firm belief in their rights to identity as a special people, we have tended to assume that they were merely a poverty problem on the periphery of our affairs in Canada. While a study of history can do much to show why native people have always held these views, the important thing is that we start to listen now. As close as some of us have been to native people over the years we really haven't been listening, and as we begin to listen now we will find many things that may be difficult to accept, initially, but which finally will be seen to have considerable merit.

One of the things that we must face at the outset is that while we have always talked in terms of integration and equality, the fact is that we are co-existing with native people in this country; we are separate; and they do have a special status under our constitution, through law, and through Government policy. So when native people talk in terms of some degree of separateness and special status, they are not really suggesting something new but, rather, new forms of the basic relationship that has always existed between them and other Canadians. I believe that we have been ignoring a basic reality which must be accepted before we can accomplish much in the way of viable relationships. We may not think that separateness is desirable, but we must accept that it exists and it may be that new and healthier forms of it may be necessary before we can really come closer together with native people.

Seen as an effort to maintain their identity, the history of native communities in Canada is a remarkable story of a fight for survival of a greatly outnumbered people who have tenaciously stuck to their identity, even though it has meant a great deal of hardship.

One of the responses I hear from non-natives who are thinking about this situation is that the country was in fact conquered by Europeans, without any significant wars or bloodshed, but nevertheless conquered, and native people should accept this and give up any aspirations they may have had to a continuation of their traditional place in Canada. I find this point of view a little hard to accept myself on at least a couple of counts.

Any of you who may have seen the recent film "White Dawn" will know of one symbolic story of how native people initially opened their doors and provided a great deal of assistance to newcomers. I think this is not an aberration in Canadian history but, in fact, a consistent pattern in the first meetings between Europeans and native people in this country. For us to have accepted their generosity and their assistance, to have accepted their basic concept of sharing, and then to later claim that we were in fact conquerors in disguise and that they really have no rights seems to me immense hypocrisy.

Another aspect of the history of European contact with native people is that we recognized in the early stages their substantial right to land in the country and their right to govern their own affairs. Over the years, we have whittled away at these originally recognized rights to the point

where there is often very little left. Native people are now saying to us that they want a recovery of the basic rights that we had understood at the outset.

Finally, as a practical matter, I don't think it is of much use to argue at this point that native people were conquered and have no rights. The fact of the matter is that they do not feel they were conquered, they have not consciously or willingly given up nearly as much as we have assumed, and they are simply not prepared to accept assumptions of this sort. They are saying that this was originally their country, that we have either never made a satisfactory deal with them or we have not lived up to the spirit of the deals we did make, as in the treaty areas, and that we must do so now in terms which are acceptable in this day and age.

Perhaps they are asking us to think about how we would deal with a situation where Canada found a hitherto undiscovered island populated by people who lived off the land, and Canada wished to extend its sovereignty to the island. How would we deal with this kind of a situation today? Would we ignore the rights of the people who lived there, or would we accept their basic rights and work out an arrangement which was fully satisfactory to both sides? Some would say that this example is completely irrelevant because contact occurred many, many years ago in Canada and that is all water under the bridge. Well, we all know we can't turn back the clock, but we must accept that we have some unfinished business and native people are asking us to look at it in a light which recognizes their original free and independent sway over this vast country.

In thinking along these lines, Indian leaders have brought to my attention several examples of Indian self determination under the jurisdiction of a larger power. For example, my understanding is that certain tribes of Indians in the United States, notably the Navaho, have a substantial degree of autonomy in their own affairs. For example, I believe they run their own court system. Other examples have pointed to the idea of domestic nations and protectorates of various kinds. Still other examples which they advance point out that within our constitution we grant a high degree of autonomy to provincial and municipal governments. None of these models are necessarily appropriate in the Canadian context but we must accept that native people are seriously talking about a distinctly different place within Canadian society, an opportunity for greater self determination and a fair share of resources, based on their original rights. No doubt this will require new and special forms of institutions which will need to be recognized as part of our political framework.

In thinking about native aspirations, I think it is quite relevant to look at the aspirations of French Canadians. In many ways, French Canadians have held similar political and economic aspirations, in that they have always insisted on having a substantial resource base and running their own affairs as much as possible. For them, it has worked out reasonably well because they are substantial in numbers, concentrated largely in one geographical area, and have had the political muscle to make it possible for them to achieve many of their objectives through provincial status. Indians, I am sure, would say that they have every bit as much right as not one of the founding races but the founding race in Canada, to be able to satisfy their aspirations in this respect, although I would not want to suggest that provincial status is something that they have in mind or that it would be at all workable.

But in mentioning provincial status, another parallel comes to mind. It seems to me that native aspirations in the Northwest Territories are not substantially different from the aspirations of other northerners who want provincial status. Such status would give in effect the right to own and run that part of the country. Native leaders are talking in

exactly these terms, and while I appreciate that there is a substantial racial distinction in their position, it is at root, based on aspirations similar to those close to the hearts of all northerners.

Another point of view that I often confront in reaction to the native position is that all of us, native and other Canadians, have come to the part of Canada we live in from somewhere else and that native people should not have any more rights than the Scotch, or the Ukrainians, or the Chinese, who have come to Canada more recently. There is of course one major difference. Native people in Canada resided here for a substantial period of time before European contact. All of us who have come subsequently did so of our own free will, knowing the government and the rules under which we would live. This is not the case with native people. They were here and we imposed ourselves upon them.

Still others are skeptical that native people can really assume the responsibility that goes with considerable resources and autonomy. This viewpoint usually rests on the history of native affairs in Canada and I think that one must note that a lack of resources and autonomy have not permitted any significant demonstration of their capacity to cope with economic and political independence. From where I sit, I can say most strongly that I think there is no doubt that they can cope perfectly well if they have the resources and control over their own lives. The leadership will develop if the opportunity is there. Already, we have in many Indian leaders in this country and indication of the sincerity, dedication and capability needed to face today's problems.

What are the implications of all this for non-native northerners and for non-native people across Canada? If there is a fear that our style may be cramped a bit in the future, I think it is well founded. If we are to deal fairly with native people, it must mean that they are given the type of power in economic and political terms which will make things more difficult for us in some ways. Notably, the development of the North and other remote parts of Canada may become more difficult from the standpoint of non-native people. But we have to face this. And I think it can be argued that there are ultimately benefits to us as well in that we will be living with much healthier, more viable and contributing native communities.

If we don't face up to it, I think it is clear that native people will feel forced to extreme action in order to achieve what they believe to be, and what seems to an increasing number of other Canadians, to be, a very legitimate aspiration. The activism which we have seen building elsewhere in Canada should not be taken lightly. I think it is symptomatic of a greater awareness and confidence amongst native people as well as a great deal of growing impatience. There are many good manifestations of these characteristics in terms of building native communities and the actions which we have seen recently are only one element of dramatic change in the native situation in the country.

I want to make it absolutely clear that I am in no way advocating militancy and certainly not violence, but I think that the degree of militancy and extremist measures around the world should tell us that if we don't take the legitimate concerns of native people seriously, we should not be surprised if extremism, which we smugly feel is the problem of the Irish or the Americans, becomes our problem in a real and direct way. We have had a relatively placid, peaceful history in Canada but it is not impossible to imagine the frustrations of a re-awakened people leading to extremes that could make Canada a less pleasant place to live.

I think those of you that know me will appreciate that I am not inclined to be pessimistic by nature and that I am

not a preacher of doom and gloom. These comments are, I believe, a realistic appraisal of the world we live in. I view our Indian situation in Canada as one of emergency proportions needing the highest priority of attention.

In a more general vein, I think that we are coming to a time in the world when the countries that have the lion's share of resources and wealth must become prepared to share much more or we will face the wrath of those who are much less fortunate but are becoming much more aware of the imbalance in the allocation of the world's resources. If we are not prepared to adopt more of a sharing attitude, we must be prepared at some time in the future to face substantial political, if not military, challenges. In this context, we might well view our relationship with native people as a first step in recognizing that sharing, perhaps in the sense that native peoples tend to think of it, must become more a part of our way of life.

In my view, the settlements we make with native people must have a number one priority in this country. In a sense, everything that happens in this country is based on the land which they originally owned. It seems to me that it is a fundamental point of honor of which we have been indifferent. We should not approach settlements from the standpoint of what the budget will allow, although it is quite clear that this country can easily afford very substantial settlements. Whatever settlements turn out to be, they should at least provide enough in the way of resources and control to enable native people to build and sustain viable communities as quickly as humanly possible.

If the road to this result involves some degree of racial separation, I think we must accept it. We already have it, and if we do not recognize the legitimate aspirations of native people, we will greatly increase it, perhaps to the point of no return. At present, in spite of the poor relationships that we have had in the past, there is still the hope that we can live comfortably together. In any event, we should at least know by now that integration of native people can't be forced. The road to eventual harmony is through their development on their terms as a distinct people within Canada. Once this development has occurred, I have no doubt that our common interests will begin to draw us closer together.

Here, in the Northwest Territories, the land claims issue is given added urgency because of the pipeline issue. The circumstances here are, in that sense, not different from those in some other parts of the country. The question of the unfulfilled obligations to the Indians of northern Quebec under the 1912 Quebec Boundaries Extension Act did not become urgent until the James Bay hydro development resulted in massive inroads into previously untouched Indian areas.

Construction of a pipeline would result in dramatic and rapid social changes to hitherto relatively isolated and traditional settlements along the MacKenzie river. All of us fear and resist change. But even for those of us who think we know and appreciate something of the communities and people of the MacKenzie, it is hard to imagine the psychological and social impact that a pipeline would bring.

There seems little doubt that, sooner or later, a pipeline will be built. I believe that Indian leaders in the north recognize this and what's more, they recognize that if the pipeline is not to destroy their people, they must have real voice, real authority, and some measure of control over construction and operation of the line. It would be foolish to suggest that Indian leaders are so naive to believe that resource development is unnecessary for the maintenance of a modern standard of life. I do not hear them saying they do not want development. What I hear them saying is that they want it only if they have a primary role in that development.

If the pipeline is thrust ahead without the terms of an arrangement that provides for real native input into the

control processes, a human tragedy will result and another sad chapter in our failure to hear and heed our native brethren will be written. Time is of the essence. We must realize that natives must be heard. The natives, for their part, must recognize the great pressures for development that impinge upon the entire nation and further recognize that in the global energy game now being played even Canada itself may be relatively powerless to be totally self determinate. This means that the claims work of the native groups must be shaped in a way to permit the earliest possible resolution of the problem of ensuring real native power in the pipeline game.

As you know, the Indian land claim in the Northwest Territories has centered on a dispute over the significance of Treaties 8 and 11. The Indians have insisted that they did not surrender the land in these treaties -- that they were simply treaties of peace and friendship. They have testified strongly to this effect in the recent caveat hearings. I have always felt that the situation of Indians in the Northwest Territories calls for a comprehensive settlement which is at least as good as those that may result for Indians in the Yukon and Inuit across the north. It would be ludicrous and tragic to make modern settlements with some native northerners and leave others out. Furthermore, it is clear that the land provisions of the treaties in the north have never been fulfilled and so, regardless of the legal outcome of the caveat appeal, there is ample reason to negotiate on the basis of fundamental Indian rights. Having urged this approach for some time, I was pleased to play a role in assisting the Indians and the Government reach agreement last winter when Mr. Chretien and Mr. Wah-shee jointly announced that discussions would be held to develop the groundwork for a comprehensive settlement of Indian claims in the Northwest Territories.

However, it must be appreciated that it will take considerable time for native people to prepare their proposals for settlement and an even longer time to prepare for handling the settlement when it does come. Their processes are highly democratic and the issues are complex. Ideally, natives should have several years to prepare for settlement. Preparation for change and real change within Indian communities is a challenge to leadership. This challenge cannot be met overnight.

Meanwhile, events are marching on and may overtake the participants in the long and arduous discussion and negotiation that must precede settlement. There may be interim measures which, if pursued in good faith by both sides, might ensure significant native power over development projects while at the same time not seriously prejudicing the larger issues. It might be well for both sides, at this stage of discussion, to consider various possibilities inherent in a partial solution in the event that an overall solution is overly pressured by the onrush of events.

Obviously the Alaska settlement established a new benchmark for the magnitude of settlements in North America. However, in Canada, native peoples have shown that they are much more interested in settlements which preserve their rights rather than terminate them. Thus the reaction in northern Quebec that "what's a hundred million dollars" and in the Northwest Territories that "land surrender in return for compensation is rejected as a land settlement model . . . They (the natives of the MacKenzie) have rejected the notion that land settlement necessarily means the extinguishment rather than the preservation of rights".

I cannot emphasize too strongly that we are in a new ball game. The old approaches are out. We've been allowed to delude ourselves about the situation for a long time because of a basic lack of political power in native communities. This is no longer the case and there is no way that the newly emerging political and legal power of native people is likely to diminish. We must face the situation

squarely as a political fact of life but more importantly, as a fundamental point of honor and fairness. We do, indeed, have a significant piece of unfinished business that lies at the foundations of this country.

I hope that we are psychologically prepared for this challenge. It has come upon us rather suddenly and tends to shock the basis on which we have always thought about our

relationship with native people. I suppose, in a way, we tend to react like somebody who has been standing on the other fellow's toes for so long that we are indignant when he wants to pull his foot out. I hope we can overcome this for his sake and ours.

October, 1974

